

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

FRANCISCO SURIEL,

Plaintiff,

v.

**THE PORT AUTHORITY OF NEW YORK AND
NEW JERSEY, PORT AUTHORITY POLICE
DEPARTMENT; Police Officer ANDREW
SAMUEL, Shield No. 3331; Police Officer
JEREMY KHAN; Sergeant JOSEPH
OPROMALLA; JOHN DOE, as Administrator of
the Estate of ROBERT JONES; Police Officer
BRETT TELESFORD; JOHN and JANE DOE 1-
10,**

Defendants.

**DOCKET NO.: 1:19-cv-3867
(PKC)(ST)**

**DECLARATION OF THE RECORD
IN SUPPORT OF DEFENDANTS'
CROSS-MOTION AND IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR A PROTECTIVE
ORDER**

I, Christopher Valletta, Esq., certify, under penalty of perjury, that the following is true and accurate:

1. I am an attorney in the Port Authority's Law Department, attorneys for Defendants, the Port Authority of New York and New Jersey (the "Port Authority") and individually named Defendants Andrew Samuel, Jeremy Kahn, Joseph Opromalla, and Brett Telesford (collectively referred to as "Defendants"). I am familiar with the facts and circumstances stated herein.

2. This familiarity is based upon the records and files for this case, and direct communications with Plaintiff's counsel. Defendants submit the documents described below, in support of its cross-motion and opposition to Plaintiff's motion for protective order. The documents are a true and accurate copy of the record in this action.

3. Attached as Exhibit "A" is a true copy of Plaintiff's Second Amended Complaint, filed with the Court on December 9, 2020.

4. Attached as Exhibit “B” is a true copy of excerpts from Plaintiff’s deposition testimony, dated November 18, 2020 and May 6, 2021. In part, these excerpts detail Plaintiff’s description of various injuries including his back, shoulder, foot, and the “entire spinal cord area” from the neck down to the waist. See Ex. B, p. 292:4-8; 19-24. Plaintiff thereafter had back surgery in December 2018. Id. at p. 299: 8-10. Moreover, Plaintiff further testified that he has not returned to work since the date of incident and that Dr. Salehin “did not recommend it.” Id. at p. 307: 2-4; p.314: 5-9.

5. Attached as Exhibit “C” is a true copy of Defendants notice pursuant to Rule 26 (a)(2) with the expert designation of Dr. Andrew M. Casden, along with an independent medical examination notice to be conducted by Dr. Casden, served via email on May 20, 2021.

6. Attached as Exhibit “D” is a true copy of an email sent by Plaintiff counsel on May 26, 2021 requesting a different date for the independent medication examination.

7. Attached as Exhibit “E” is a true copy of an email sent by Defendants to Plaintiff counsel on May 26, 2021 confirming the IME was re-scheduled to Plaintiff’s requested date of June 23, 2021 at 4:30pm. Based on this May 26, 2021 email exchange with Plaintiff’s counsel confirming the new agreed upon date, Dr. Casden reserved this specific time slot for the IME.

8. Attached as Exhibit “F” is a true copy of an email forwarded by Plaintiff counsel rejecting the independent medical examination notice, received by Defendants on June 17, 2021. Defendants did not have a record of any e-mail from Plaintiff counsel rejecting the IME until the email marked as Exhibit F was sent by Plaintiff in response to Defendants’ June 16, 2021 email confirming the IME was going forward on June 23, 2021.

9. Attached as Exhibit “G” is a true copy of the curriculum vitae of Dr. Andrew M. Casden.

10. Attached as Exhibit “H” is a true copy of medical records sent by Total Orthopedics and Sports Medicine to Defendants pursuant to subpoena. These medical records show appointments prior to the spinal fusion surgery (diagnosing L5-S1 herniations and disc bulges). Prior to surgery, Plaintiff complained of severe neck and back pain, including issues “bending, sitting, standing, and walking.” See Exhibit H, Bates Stamped page PA 2058. The records also detail follow-up appointments with Dr. Lerman following the spinal fusion surgery on December 13, 2018.

11. Attached as Exhibit “I” is a true copy of the Oversight Physician Report, which details Plaintiff’s spinal fusion surgery performed by Dr. Lerman on December 13, 2018, sent by Nassau University Medical Center.

PORT AUTHORITY LAW DEPARTMENT
Attorney for Defendants

By: /s/ Christopher Valletta
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Dated: June 24, 2021